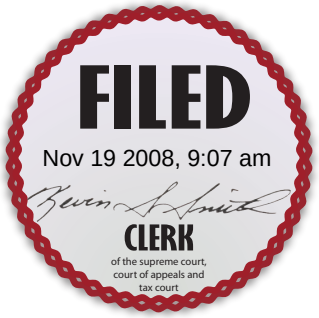

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IN THE
COURT OF APPEALS OF INDIANA

MARC L. BLANCHETTE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 40A05-0806-CR-341
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE JENNINGS SUPERIOR COURT
The Honorable James L. Funke, Jr., Judge
Cause No. 40D01-0710-CM-0723

November 19, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Marc L. Blanchette appeals his conviction for Battery,[1] a class A misdemeanor, arguing that there is insufficient evidence supporting his conviction. Finding no error, we affirm.

FACTS

On September 18, 2008, Blanchette and his family were at the home of their neighbor, Alvin Pearson, playing cornhole. At some point, Pearson's other neighbor, Randy Yeager, and Randy's son, Vincent Yeager, returned home. Randy evidently owned the property on which Blanchette and his family resided and was planning to evict the Blanchettes.

Blanchette approached the fence that divided Pearson's property from Yeager's and began screaming, calling Randy "a no good bastard" and a "son of a bitch," and then, after Randy initially ignored the insults, Blanchette called Randy's wife a "bitch" and a "whore[.]" Tr. p. 52-53, 80. At that point, Randy became upset and walked toward the fence, remaining on his own property. Randy raised his hands with open palms as he approached Blanchette. Blanchette immediately struck Randy in the face. Vincent ran over to help his father, but Blanchette struck Randy a second time, causing Randy to fall over the fence onto Pearson's property. Vincent jumped over the fence to help his father stand up, but before Randy was fully upright, Blanchette struck Randy a third time, knocking him unconscious. Randy suffered a laceration to his knee, ruptured disks in his neck, and numbness in an arm and both legs as a result of the altercation.

[1] Ind. Code § 35-42-2-1.

On October 15, 2007, the State charged Blanchette with class A misdemeanor battery. Following a January 9, 2008, bench trial, the trial court found Blanchette guilty as charged on January 22, 2008. The trial court sentenced Blanchette to 365 days, with 355 suspended to probation, and ordered Blanchette to stay away from Randy and complete an anger management class. Blanchette now appeals.

DISCUSSION AND DECISION

Blanchette argues that there is insufficient evidence supporting his conviction. In evaluating the sufficiency of the evidence, we will neither reweigh the evidence nor assess witness credibility. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We will consider only the evidence and inferences that are most favorable to the judgment and will affirm if there is sufficient evidence of probative value from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. Wise v. State, 719 N.E.2d 1192, 1200 (Ind. 1999).

To convict Blanchette of class A misdemeanor battery, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally touched another person in a rude, insolent, or angry manner, resulting in bodily injury to another person. I.C. § 35-42-2-1. Blanchette does not argue that the State failed to prove these elements; instead, he contends that the State failed to disprove his claim of self-defense.

To prevail on a claim of self-defense, the defendant must establish that he was in a place where he had a right to be, that he acted without fault, and that he had a reasonable fear or apprehension of death or great bodily harm. Boyer v. State, 883 N.E.2d 158, 162

(Ind. Ct. App. 2008). To obtain a conviction after self-defense has been raised, the State must disprove the existence of one of those three elements beyond a reasonable doubt. Id. Whether the defendant acted in self-defense is a question for the trier of fact, Jordan v. State, 656 N.E.2d 816, 818 (Ind. 1995), and we review a challenge to the sufficiency of the evidence rebutting a self-defense claim under the same standard as any other sufficiency of the evidence claim, Boyer, 883 N.E.2d at 162.

Although Blanchette admits that he instigated the confrontation when he began yelling at Randy, he insists that Randy approached the fence with a brick in his hand. According to Blanchette, he was afraid for his safety because Randy held a brick in the air as though he was preparing to hit Blanchette with the object. Therefore, Blanchette contends that he was defending himself by striking Randy until the brick fell out of his hand.

The State, however, offered the testimony of Randy and Vincent, who both testified that Randy had nothing in his hands when he approached the fence. Furthermore, Blanchette struck Randy three times, and the third blow occurred when Randy was being helped up from the ground by his son. Blanchette delivered the blow with such force that it knocked Randy unconscious and ruptured disks in his neck.

Blanchette argues that we should reverse his conviction based upon the incredible dubiosity rule. Pursuant to this rule, a court may impinge on the factfinder's responsibility to assess witness credibility when a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete

lack of circumstantial evidence of the defendant's guilt. Corbett v. State, 764 N.E.2d 622, 626 (Ind. 2002). Blanchette argues that Randy's testimony was incredibly dubious. The rule does not apply, however, inasmuch as Vincent also testified and corroborated his father's version of events. Furthermore, Randy's testimony was neither inherently contradictory nor the result of coercion. Consequently, it was for the factfinder to evaluate the competing version of events and we will not disturb the outcome on this basis.

Thus, the record reveals that when Randy approached the fence—and Blanchette—he did so with open palms. Inasmuch as the factfinder credited this version of events over Blanchette's—a determination we may not and will not second-guess—we find this evidence sufficient to disprove Blanchette's contention that he had a reasonable fear or apprehension of death or great bodily harm. On this basis alone, therefore, the State met its burden of disproving Blanchette's self-defense claim with sufficient evidence.[2]

We also note, however, that Blanchette concededly instigated the conflict. It is well established that to raise a successful self-defense claim, the defendant is required to establish that he acted without fault. Henson v. State, 786 N.E.2d 274, 277 (Ind. 2003). If the defendant provoked, instigated, or willingly participated in the violence, he was not

[2] Blanchette finds fault with the trial court's statement that "if he was in fear, he would have been backing up," tr. p. 204, arguing that this statement means that the trial court was impermissibly imposing a duty to retreat upon Blanchette. We disagree with this analysis, however, inasmuch as it is evident that the trial court was merely explaining part of its conclusion that Blanchette was not truly experiencing fear or apprehension of death or great bodily harm.

without fault. Id. (finding that the defendant was not entitled to a self-defense jury instruction because he had provoked the confrontation by threatening, yelling, and screaming at the victim). Here, the undisputed evidence establishes that Blanchette instigated the conflict. He approached the fence first, shouting epithets at Randy and then, when Randy initially ignored him, called Randy's wife a "bitch" and a "whore." Tr. p. 52-53.

Blanchette argues that "if this behavior rises to the level of fault, then every time someone yells at another individual it gives the individual the right to threaten or attack the person yelling." Appellant's Br. p. 10. This argument misses the point, inasmuch as the factfinder concluded that Randy did not, in fact, threaten or attack Blanchette. Furthermore, if a defendant is the initial aggressor, he may still claim self-defense if he "withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action." Ind. Code § 35-41-3-2(e). Here, there is no evidence that Blanchette sought to withdraw from the encounter. Under these circumstances, therefore, we find that the State disproved Blanchette's contention that he acted without fault beyond a reasonable doubt. Because the State disproved two of the elements of self-defense beyond a reasonable doubt, we find that there is sufficient evidence supporting Blanchette's conviction.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concur.